IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04/07/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.P. No.620 OF 2000

S.T. Raja Daniel ..... Petitioner

-Vs-

1. The High Court of Judicature at Madras
rep. by its Registrar, Chennai

2. The Government of Tamil Nadu
rep. by its Secretary
Home (Courts) Department
Chennai 600 009 ..... Respondents

Petition under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated in the petition

For Petitioner :: Mr. R. Gandhi, Senior Counsel
for Mr. Paul Vasanthakumar

For Respondents :: Mr. S.T.S. Murthy, Spl.G.P.

:ORDER

V.S. SIRPURKAR, J.

In this petition, the decision on the part of the High Court, first respondent herein as also the Government of Tamil Nadu, second respondent herein, to retire the petitioner at the completion of the age of 58 years and not permitting him to continue up to the age of 60 years is in challenge.

2. Petitioner, Shri S.T. Raja Daniel, was at the relevant time working as a Judicial Magistrate Second Class. Since he was to complete the age of 58, a decision had to be taken by the High Court as to whether he should be allowed to continue up to the age of 60 in terms of the Supreme

Court judgment in All India Judges case (AIR 1993 SC 24 93). That exercise was done by the Administrative Committee set up by the High Court and the said Committee came to the conclusion that the petitioner should not be allowed to continue in service till the age of 60. According to the concerned proceedings dated 25-1-1999, the petitioner was informed that his case was considered as per the guidelines given by the Supreme Court of India and that a decision was taken not to continue his service beyond the age of 58 and up to 60 years and that he was to be superannuated from the Tamil Nadu Judicial Service on the afternoon of 31-1-1999. At the time when this decision was taken, the petitioner was on suspension as a disciplinary enquiry was in progress against him on some serious charges of misconduct. Ultimately, after the petitioner has retired, it has been stated at the Bar, that the petitioner had been held guilty in that enquiry and since he was already superannuated earlier, his pension has been ordered to be reduced by Rs.500/-. We are not concerned in this petition with the punishment part of the disciplinary

enquiry and that is entirely separate subject. We are only concerned with the merits of the decision taken by the High Court in not allowing the petitioner to continue beyond the age of 58.

3. It is to be noted that initially the age of superannuation of the officers like the petitioner was 58 years. The Supreme Court in All India Judges case, cited supra, while considering the question of service conditions of the subordinate judicial officers also took into consideration the age of superannuation and observed as follows:
"If the nature and the nature and the magnitude of work done by the judicial officers all over the country is the same and if further the members of the higher judiciary, who have to discharge more onerous workload, do it efficiently even at the still higher age, there is no reason why in view of the shortage of the proper talent, the age of retirement of the members of the subordinate judiciary should not be increased to 60 years."
While so, the Apex Court further observed:
"However, the benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters."
A Judicial Officer, therefore, cannot claim a right to be continued in service up to the age of 60 years and beyond the age of 58 years. What he can claim is the consideration of his representation to continue in service beyond the age of 58 years and up to the age of 60 years on the basis of the guidelines given in the aforesaid Supreme Court judgment.

4. When we see the counter affidavit filed by the Registrar General

of the High Court, it is obvious that such exercise was done in case of the petitioner who was completing the age of 58 years on 31-1-199 9 and, therefore, his case was considered by the Screening Committee of the High Court to take a decision regarding his continuance in service beyond the age of 58 years. This exercise was done in the meeting held on 4-11-1998. It is also pertinent here to note that there was a representation made by the petitioner to permit him to continue in service beyond the age of 58 years and up to 60 years. That was also considered before the Committee and the Committee, after taking into consideration his performance, service record and the general reputation about his integrity, conduct, etc. came to the conclusion that there was already an enquiry pending against the petitioner and he was already continuing under suspension on that date. It was also further considered that the general reputation of the petitioner was very bad and, therefore, though he was found medically fit to continue in service beyond the age of 58 years, he was directed to be superannuated at the age of 58 years without giving him the benefit of two further years of service. Once it has come on oath by way of counter-affidavit from the Registrar General of the High court that the necessary exercise was done and the petitioner's case was actively considered with all the records of his service, his Confidential Records, etc., there would be no question of holding that the case of the officer was not considered at all. We are, therefore, of the firm opinion that there would be no question of finding any fault with the decision of the High Court dated 4-11-1998.

5. The Registrar General in his counter-affidavit has pointed out that the departmental enquiry, which was at that time pending against the petitioner, was on account of six charges. Charge No.1 was the petitioner's attempt to commit the act of outraging the modesty of one Tmt. Vasuki, Steno-Typist working under him and since she had refused to yield, she was threatened by the petitioner that she would be terminated from her service as she was on temporary appointment; Charge No.2 was the insistence of the petitioner in visiting the house of the said Tmt. Vasuki frequently and compelling her to talk to him despite her protests which caused mental anguish to the said lady and other inmates in the house; Charge No.3 pertained to the incident dated 21-7-1996 when the petitioner trespassed into the house of Tmt. Vasuki and tried to catch hold of her hands and also whisking away from her the written complaint made by her to the Additional District Judge cum Chief Judicial Magistrate, Vellore; Charge No.4 also in relation to the incident on the same date where the petitioner had gone to the house of one Jayachandran, Stenographer and requested him to persuade Tmt. Vasuki not to give any complaint against him; Charge No.5 was in respect of his behaviour in the court by using unparliamentary language against the Assistant Public Prosecutor in the open court while the sixth charge also pertained to the irregularities committed by him while recording the evidence. The petitioner was on suspension right from the year 1996 and, therefore, we fail to see as to how the fact of the pendency of the departmental enquiry into the aforesaid grave charges could have been ignored by the Screening Committee of the High Court. It was rightly not ignored and taken into consideration.

6. Shri R. Gandhi, learned senior counsel, however, tried to argue that in respect of this very departmental enquiry, the Enquiry Officer had

exonerated the petitioner of all the charges. However, the High Court did not agree with that and on the basis of the report submitted by the Hon'ble Mr. Justice E. Padmanabhan, who was requested to go into the record to test the correctness of the enquiry report, the Committee ultimately found him guilty and ultimately directed the petitioner's pension to be reduced by Rs.500/-. Learned senior counsel fervently contended that the report of Hon'ble Mr. Justice E. Padmanabhan should have been given to the petitioner before taking any decision to find him guilty. We fail to understand as to how this aspect can be argued in the present writ petition particularly because the impugned action in this case is much earlier to the subsequent happening of the petitioner being found guilty in the departmental enquiry. The petitioner may raise all his grounds regarding the correctness or otherwise of the disciplinary proceedings against him wherein he has been punished but, the non-supply of the copy of the report of Hon'ble Mr. Justice E. Padmanabhan is a completely irrelevant fact in so far as the impugned decision of the Screening Committee and the High Court not to extend the petitioner's service beyond the age of 58 years. The aforementioned report is much posterior in time to the impugned decision. In that view, the argument of the learned senior counsel to the effect that we should review the decision taken by the High Court to retire the petitioner at 58 years on the basis of the subsequent fact of non-supply of the report of Hon'ble Mr. Justice E. Padmanabhan is entirely incorrect and is rejected.

7. Learned senior counsel has really not addressed us as to whether the Screening Committee has in any manner failed to consider any vital aspect or has considered some extraneous aspects while taking the decision. There would be, therefore, no question of considering further the merits and demerits of that decision.

8. Learned senior counsel brought to our notice two reported decisions. The first being the decision in Nawal Kishore Prasad v. State of Bihar & Others (2001 [6] Supreme 22) wherein the Supreme Court had found fault with the High Court in not granting the extension of service from 58 years to 60 years. In our opinion, there is nothing in that decision which would help the petitioner. There, there was a finding by the Division Bench of the High Court that the officer was of outstanding merit and that the decision to retire him at the age of 5 8 years was arbitrary and violative of Art.14 and Art.16 and yet the High Court did not grant any relief to the officer since he had already retired. We do not think that this decision has any relevance to the present controversy.

9. The other decision, which was relied upon by the learned senior counsel, is All India Judges Association and others v. Union of India and others (2002 [4] SCC 247) also does not help the petitioner in any manner.

10. There would be, therefore, nothing on merits to interfere with the impugned decision of the High Court to retire the petitioner on his attaining the age of 58 years. The petition has no merits and is, therefore, dismissed. However, in the circumstances, the petitioner is inflicted with the costs of Rs.2,000/-. Connected W.M.P. No.900 of 2000 is closed.

Index:Yes
Website:Yes

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To:

1. The Registrar General
High Court of Judicature at Madras
Chennai

2. The Secretary
Home (Courts) Department
Government of Tamil Nadu
Chennai 600 009